

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JOSEPH B. WATERS,

Petitioner,

v.

No. 2:22-cv-926 MV/KRS

FNU STEVENSON *Warden*, and
ATTORNEY GENERAL OF THE
STATE OF NEW MEXICO,

Respondents.

**ORDER ADOPTING MAGISTRATE JUDGE’S
PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

THIS MATTER is before the Court on the Magistrate Judge’s Proposed Findings and Recommended Disposition (“PFRD”), filed April 25, 2024. (Doc. 15). The PFRD notified the parties of their ability to file objections within fourteen (14) days and that failure to do so waived appellate review. (*Id.* at 12–13). To date, the parties have not filed any objections and there is nothing in the record indicating that the proposed findings were not delivered.

The PFRD proposed that the Court find that Petitioner has filed a mixed petition containing both exhausted and unexhausted claims. (*See* Doc. 15). Specifically, the Magistrate Judge found that Petitioner exhausted the following claims: ineffective assistance of counsel based on trial counsel’s failure to suppress Petitioner’s non-Mirandarized statements to law enforcement, advice to decline the State’s plea offer, failure to investigate Petitioner’s defenses and witnesses, failure to call witnesses and rebuttal expert witnesses (sub-claims 1(b) – (f)), and double jeopardy (Ground 3). (*Id.* at 7–9). The Magistrate Judge found that Petitioner’s remaining claims—Sub-claim 1(a) that his trial counsel was ineffective for preventing Petitioner from testifying at trial, Ground 2 that

his first degree kidnapping conviction was illegal, and Ground 4 that the cumulative effect of all errors including, but not limited to, fundamental errors and harmless errors, warranted relief—were unexhausted. (*Id.*)

The PFRD recommended that Petitioner be given thirty (30) days after an order adopting the PFRD to voluntarily dismiss his unexhausted claims and proceed on his remaining claims. (*Id.* at 12). The PFRD further recommended advising Petitioner that if he did not voluntarily dismiss his unexhausted claims, the Court would dismiss his entire petition without prejudice. (*Id.*).

On May 9, 2024, the Court received a letter from Petitioner confirming receipt of the PFRD, and requesting the Court “drop or dismiss [his] unexhausted claims and proceed with the exhausted claims.” (*See* Doc. 17 at 1).

IT IS HEREBY ORDERED that:

1. The PFRD (Doc. 15) is **ADOPTED**;
2. Petitioner’s request to dismiss his unexhausted claims, Sub-Claim 1(a), Ground 2, and Ground 4 is **GRANTED**, and Sub-Claim 1(a), Ground 2, and Ground 4 are **dismissed without prejudice**; and
3. Respondent is hereby ordered to file a supplemental answer addressing the merits of Petitioner’s exhausted claims by **June 28, 2024**.

IT IS SO ORDERED.



MARTHA VAZQUEZ
SENIOR UNITED STATES DISTRICT JUDGE